TECHNICAL AMENDMENTS TO THE DISTRICT OF COLUMBIA CHARTER

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1845

TO AMEND THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT AND THE CHARTER OF THE DISTRICT OF COLUMBIA WITH RESPECT TO THE PROVISIONS ALLOWING THE DISTRICT OF COLUMBIA TO ISSUE GENERAL OBLIGATION BONDS AND NOTES AND REVENUE BONDS, NOTES, AND OTHER OBLIGATIONS

DECEMBER 9, 1981

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TECHNICAL AMENDMENTS TO THE DISTRICT OF COLUMBIA CHARTER

WEDNESDAY, DECEMBER 9, 1981

U.S. SENATE,
SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 5110, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the subcommittee), presiding.

Present: Senator Mathias.

Staff present: Eileen Mayer, chief counsel; Margaret Crenshaw, minority chief counsel; Christine Sarcone, chief clerk; and Bill Leonard, staff director.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. We now turn to Senate bill 1845, the technical amendments to the Home Rule Act.

Our first panel will include Barbara Washington, Assistant City Administrator for Intergovernmental Relations, with Jeff Humber, Deputy to the City Administrator, and Bill Kao, Assistant District of Columbia Treasurer; and Stephen L. Reichenberg, budget director for the Council of the District of Columbia.

Ms. WASHINGTON. Good morning, Mr. Chairman.

Senator MATHIAS. I introduced S. 1845, along with Senator Eagleton and Senator Rudman, on November 12. This legislation would amend the District of Columbia Self-Government and Governmental Reorganization Act and the charter of the District of Columbia with respect to the provisions allowing the city to issue general obligation bonds and notes and revenue bonds, notes and other obligations.

We will hear from two panels of witnesses. In order to expedite the subcommittee's proceedings, I would like to move right into the testimony immediately.

I will ask you to summarize very briefly your testimony.

TESTIMONY OF BARBARA C. WASHINGTON, ASSISTANT CITY ADMINISTRATOR FOR INTERGOVERNMENTAL RELATIONS, ACCOMPANIED BY JEFF HUMBER, DEPUTY TO THE CITY ADMINISTRATOR, AND BILL KAO, ASSISTANT DISTRICT OF COLUMBIA TREASURER; AND STEPHEN L. REICHENBERG, BUDGET DIRECTOR, COUNCIL OF THE DISTRICT OF COLUMBIA

Ms. WASHINGTON. Thank you.

I was prepared to read the statement in full, but essentially the purpose of the measure is to eliminate certain legal impediments to a successful public offering of general obligation bonds, notes, revenue bonds, and other obligations by the District of Columbia.

It would also make those technical and conforming amendments to the Home Rule Act which are necessary to resolve several ambiguities relating to the procedures for authorizing and issuing the bonds and general obligations, also other obligations.

Last, it would give the District Government debt management flexibility comparable to that existing in many other jurisdictions.

Senator MATHIAS. Do any other members of the panel want to comment?

Ms. WASHINGTON. I believe Mr. Reichenberg has a statement.

Senator MATHIAS. Mr. Reichenberg.

Mr. REICHENBERG. I appreciate the opportunity to provide testimony on behalf of the Chairman of the Council of the District of Columbia, Arrington Dixon, and to summarize my testimony for you.

The Chairman of the Council is supportive of the passage of Senate bill 1845. We think these are necessary changes to the Home Rule Act to enable the District to go forth with bonding and other such financial measures that it deems appropriate. We would like to express our support.

With one mention of the fact that we are concerned about any provision of the bill that might limit the involvement of the public in any initiatve or referendum, and with that mention, I simply conclude by saying we are supportive of this measure.

Senator MATHIAS. Your statements will be included in the record following your testimony.

Would anyone else like to make a statement? If not, let me ask a few questions.

The first full audit of the city's books, which covered fiscal year 1980, was received, I believe, with general satisfaction.

No. 1, we are glad we could achieve an audit after a good deal of difficulty. Now, as I understand it the audit for fiscal year 1981 is currently underway.

I am wondering if this morning you have any preliminary figures as to the state of the budget, with respect to the closing of the books for 1981.

Ms. WASHINGTON. I think it would be appropriate if Mr. Humber would respond.

Mr. HUMBER. As you indicated, the audit for fiscal year 1981 is in progress. We have weekly meetings with the auditor to gage the progress. We are at this point on schedule, and the February 1 announcement is on schedule.

We have not produced interim financial statements in any formal sense for fiscal year 1981, but have reviewed our operations for that year and our preliminary numbers indicate that the District's budgets were, in fact, balanced for fiscal year 1981, and our financial statements would reflect that situation.

Additionally, the District will produce a surplus of at least the $7 million we projected earlier in the last fiscal year. While those are not formal numbers, and obviously will need to be confirmed by the audit and the accounting adjustments, we do believe at this point we not only are balanced, but have at least a $7 million surplus.

Senator MATHIAS. Thank you.

Mr. HUMBER. Yes, sir.

Senator MATHIAS. That's a very heartening estimate. I must tell you that I think the estimate that is being borne out by the final figures is important in this legislation. This legislation proceeds on the theory that the budget will at least operate in balance, if not in surplus. In addition, in other legislation before the subcommittee, we are trying to look to the liquidation of past deficits with the assurance that there will be no future deficit.

I think that is an absolute necessity.

Let me ask you if there is any reason not to expect an unqualified opinion from the independent auditor when he completes the 1981 audit.

Mr. HUMBER. We have no reason at all to expect anything less than the opinion that we had last year. That was an unqualified opinion.

Senator MATHIAS. Thank you.

Mr. HUMBER. Yes, sir.

Senator MATHIAS. Moving on to 1982, are the spending levels for the first quarter consistent with the balanced budget for fiscal year 1982?

Mr. HUMBER. We have not at this point, Mr. Chairman, produced actual numbers from the financial management system for an entire quarter. However, those numbers that we have produced will indicate that we are on track as far as spending and the budget are concerned. Those numbers, however, would only cover a 1-month period at this point.

Senator MATHIAS. Do you have any reason to anticipate spending problems in 1982 that might jeopardize the balanced budget?

Mr. HUMBER. I guess I could divide that question into two parts, Mr. Chairman. There will, of course, be a need for spending adjustments at some time during the fiscal year. We expect that will happen. It happened last fiscal year. It will probably happen this fiscal year, and in any subsequent year.

We have no reason to believe there will be a need for spending adjustments which are beyond the District's ability to manage and to handle. So at the end of the fiscal year we do, in fact, want a balanced budget.

We were committed last year, this year, and in all subsequent year to balanced budgets in the District.

Senator MATHIAS. Now, Mr. Reichenberg, in your prepared testimony, you make what I believe to be an important policy statement with respect to limitation on the ability of the citizens of the

District of Columbia to make use of the initiative and referendum provisions of the Home Rule Act on bond issues.

Is the Council satisfied that the provisions of Senate bill 1845, as currently drafted, will not interfere with this ability?

Mr. REICHENBERG. I will say this. I am satisfied that if the bill as it is written does not limit effectively the ability of citizens to bring such additional referendums or initiatives, then we are satisfied.

As I read it there are two cases. One is a case in which the Council enacts legislation enabling the issuance of bonds and provides for a general election. In that case, there would be a time delay in the transmittal of such legislation to the Congress for its 30-day review period.

In that case, the will of the people will be expressed in such a general election. That provision had been provided for.

Senator MATHIAS. Thank you.

Mr. REICHENBERG. Yes, sir.

Senator MATHIAS. What is the general philosophy of the Council as far as the referendum is concerned in relation to bond issues?

Mr. REICHENBERG. The philosophy—and I can only speak for the Chairman of the Council in this response—but his philosophy is that he would not wish to limit the involvement of citizens in any way. What we have here is a case where the Council might enact legislation and not provide for a general election, as is not always customary in such cases, and frequently there is not a need for a general election.

There could then be a case, Mr. Chairman, where an initiative or referendum movement would delay or impede the issuance of bonds or, in its effect, make such bonds not as salable as they might be.

I would defer to the bond counsel for recommendation on whether that provision would actually impede the sale or the rating of the District bonds.

I wish to express our concerns. I would like to leave it at that and not imply that a provision has not been made for the will of the people to be expressed, because, in fact, if the Council so requires a general election, it could be held.

Senator MATHIAS. Thank you.

Mr. REICHENBERG. Yes, sir.

Senator MATHIAS. Routinely, in many cities, bond issues are subjected to referendums. Sometimes they pass and sometimes they do not. Undoubtedly, it does introduce an element of uncertainty at least until the proceedings are complete.

It does, however, involve citizens very much in the projects for which bonds are intended to be issued.

Let me turn now to Ms. Washington. How do you think the provisions of Senate bill 1845 and Senate bill 744, which is legislation that would authorize the city to issue deficit financing bonds, interact?

Ms. WASHINGTON. I think basically, Mr. Chairman, they interact in that, given the District's lack of experience in entering the bond market, it is critical, based upon the advice of our financial advisors and bond counsel, that the District's books be in order.

As you are aware, Senate bill S. 744 provides for a method or mechanism for addressing the whole question of the operating defi-

cit. I think in that regard the bill or bills can be reviewed as companion or interacting, one with the other.

Senator MATHIAS. In the opinion of the city, would there be a need to enact Senate bill 744 if S. 1845 is enacted? In other words, do you need both of them?

Ms. WASHINGTON. Yes, we need both bills. The bill pending before the subcommittee at this point, Mr. Chairman, is a bill which we regard as technical in nature. It clarifies and eliminates what is viewed to be certain legal impediments for the issuance of general obligation bonds generally.

Now, Senate bill 744 is a bill which would provide for the payment of a portion of the city's outstanding operating deficit. So it is limited in that respect.

Senator MATHIAS. In the opinion of the city, would it be possible to enter the bond market successfully without the enactment of Senate bill 1845?

Ms. WASHINGTON. It is our opinion, Mr. Chairman, that this bill is necessary for proper entrance into the market. We have been advised by bond counsel, and he will more extensively elaborate on the point, that it would not be in the city's best interest to make an entry into the market without this necessary legislation.

Mr. KAO. If I could have a brief comment on the relationship between S. 1845 and S. 744, they represent, respectively, measures that go to two important conditions for achieving an operative capital bond issuance program.

At their hearts, S. 1845 addresses a number of predominantly technical features of the issuing authority which will be needed at such future time that we are embarking on a capital bond issuance program. The prerequisite that is reflected by S. 744, in essence, is the repairing of our financial condition related to the accumulated deficit to the point that is sufficient that we would be able to gain market acceptance from a financial point of view.

It is the city's view that S. 744 providing for funding of a portion of the deficit would be the most expedient and timely measure for us to achieve that needed financial stature or financial condition to issue capital bonds.

However, even absent our ability to fund a portion of the deficit with the commitment to balancing future budgets, we feel that there will be a point in the future, perhaps not as imminent, but there will be a point by which we would be able to issue capital bonds, given the authority of S. 1845.

Senator MATHIAS. Can we turn to the legislation and look at section 19? I am wondering if that is directed at a specific event which the city has already experienced.

Ms. WASHINGTON. That is correct, Mr. Chairman. That particular section covers the special situation with respect to the proposed issue of revenue bonds by the District to finance facilities for George Washington University, pursuant to section 490 of the Home Rule Act, and notwithstanding the current prohibition in the Home Rule Act with regard to the mortgaging of certain properties as a pledge.

This particular section would make operative all of the provisions of that particular act that is pending now before the Congress for final approval.

Senator MATHIAS. Thank you.

Would you like to add something?

Mr. KAO. If I can add something further, in a similar action to S. 1845, but predating it—I believe it was in 1977—Congress amended section 490 of the charter with regard to revenue bonds for private colleges and universities, the essential effect of which was to remove comparable tactical impediments and thereby make feasible issuance of District revenue bonds for that purpose on behalf of private colleges and universities.

As a result of those actions and at the request of the George Washington University, the District has been working on the issuance of higher educational facilities' revenue bonds for the financing predominantly of academic facilities and construction known as the academic cluster on the George Washington University campus.

The respective financing incorporates a provision that at such future time it becomes legally feasible, the mortgage on the academic cluster would be made part of the security of the bonds, and the rationale of section 19 of the bill is to make absolutely clear notwithstanding enactment of the Bond Act prior to enactment of S. 1845, that this is feasible.

Senator MATHIAS. Is there anything further that any member of the panel would like to add with respect to this legislation?

Ms. WASHINGTON. I would like to add, Mr. Chairman, it is our understanding that, with regard to the House companion bill, there the District Committee plans to secure floor action of that measure on the fourteenth of this month.

Senator MATHIAS. Thank you. We hope that we can move this along very promptly on this side, and we look forward to a successful outcome of this program.

Ms. WASHINGTON. Thank you, Mr. Chairman.

[The prepared statements of Ms. Washington and Mr. Reichenberg follow:]

PREPARED STATEMENT OF BARBARA C. WASHINGTON

Mr. Chairman, and members of the subcommittee, it is a pleasure to appear before the Subcommittee on Governmental Efficiency and the District of Columbia. Thank you for your consideration and this opportunity to present the District of Columbia's views on S. 1845. This measure proposes to amend the District of Columbia Self-Government and Governmental Reorganization Act and the Charter of the District of Columbia with respect to the provisions allowing the District of Columbia to issue general obligation bonds and notes and revenue bonds, notes, and other obligations. S. 1845 will provide the District with the statutory authority to issue general obligation bonds as a means of financing capital improvement projects. The measure eliminates certain legal impediments and ambiguities relating to the procedures for authorizing and issuing bonds, notes and other obligations. Finally, the bill gives the District government debt management flexibility comparable to that afforded other jurisdictions.

S. 1845 is an important step toward enhancing the financial independence of the city.

The basic purpose of the Home Rule Act was to "grant to the inhabitants of the District of Columbia powers of local self-government". Public market issuance of bonds and notes to finance capital improvements is a power typically exercised by State and local governments. However, because of certain legal questions, this power is not available to the District. Consistent with the purposes of home rule, section 461 of the act provides the fundamental authority for the District of issue municipal bonds and notes. However, the District has been unable to issue general obligation bonds since passage of the act. The District has financed its capital im-

provements by means of higher interest loans from the U.S. Treasury. In many instances the higher interest costs are substantial. The act envisioned a transition to, and eventual replacement by, municipal bonds as the mechanism for financing the District's ongoing capital program. This has not yet been accomplished.

Equipped with modern financial accounting and reporting systems, we believe that the time for this transition is now. As a matter of governmental policy and procedure, it is in the interest of both the District and Federal Governments for the District to develop and exercise the type of financing capability originally provided in the Home Rule Act. The attainment of this objective will provide the city a degree of flexibility with respect to the responsibility for financing capital needs. On a practical level, the District will save as much as 2 percent on interest costs from its current taxable financing costs.

The basic issuing authority was granted by the original act, but many existing provisions of that act need to be updated to conform with general municipal finance practice. The amendments embodied in S. 1845 are technical modifications necessary to provide clarification of the District's authority because of its unique relationship with the Federal Government.

The following examples illustrate the type of technical amendments embodied in S. 1845. Under section 461 of the Home Rule Act, general obligation bonds bear interest that is payable annually or semi-annually. This language seems to imply that only two alternatives ar possible. However, this practice may be neither possible nor desirable from an accounting or management point of view. Therefore, the amending language allows for interest to be paid "on such dates" as the Mayor may determine. Similarly, section 8 of the bill will delete the requirement that annual debt service payments be made on an equal payment basis, as is presently required. The existing requirement is unusual in municipal bond finance and could impede the ability of the District to arrange its overall debt service in a manner consistent with sound fiscal planning. Moreover, the restriction could affect the marketability by preventing the District from arranging the maturity schedule for a given issue.

Sections 2, 11, 12, 14, and 16 make clear, inter alia, that general congressional appropriation requirements of the act do not conflict with the contractual payment obligations inherent in any bonds or notes issued by the District.

This change is crucial to the marketability of any negotiable instruments. The amendments assure prospective purchasers that the timing and payment of amounts due them will not be affected by delays in the Federal budgetary process. Further, section 15 contains an important caveat. That section makes it explicitly clear that the United States does not pledge its full faith and credit, and is not liable for any bonds or notes, principal or interest, issued by the District.

Presently section 490 of the Home Rule Act provides for the issuance of revenue bonds. S. 1845 amends section 490 to authorize the use of revenue bonds to refinance existing facilities.

You should note that this administration has made significant progress in fulfilling the two other basic prerequisites to the development of its public market bond issuing ability. First, improvement in financing accounting and reporting practices facilitated the first full audit of the District's fiscal year 1980 financial condition. The independent auditors expressed an unqualified opinion. The preparation of the audit for fiscal year 1981 results is underway. Second, the District has succeeded in executing its fiscal year 1981 budget on a balanced basis for the first time in recent years. These achievements constitute an important step in recitifying past District financial practices and providing a basis for restoring our financial condition to the point of viable creditworthiness. These accomplishments have contributed to the District's fiscal health and will be important factors in the city receiving a favorable bond rating.

Considerable effort is still necessary if the District is to reach the threshold of a first capital bond issue. And diligence in maintaining balanced financial operations is one of the tasks that lies ahead. Nevertheless, the District is committed to the goal of implementing the bond issuing authority because we are confident that the development of modern financial accounting and reporting systems and present financial conditions are not fleeting accomplishments but cornerstones to continued progress.

Enactment of S. 1845 can become a catalyst to this progress.

PREPARED STATEMENT OF STEPHEN L. REICHENBERG

Thank you for the opportunity to appear before you today to provide testimony on S. 1845, a bill to amend the District of Columbia Self-Government and Governmen-

tal Reorganization Act and the Charter of the District of Columbia with respect to the issuance of general obligation bonds and revenue bonds.

On behalf of the Chairman of the Council of the District of Columbia, I support the passage of S. 1845 because it will broaden the District's financial powers and thereby bring the District closer to fiscal autonomy.

The use of bonds to finance capital projects and to assist economic development ventures is standard practice in cities across the Nation. The District will soon consider entrance into the bond market for these purposes. The changes before you will facilitate this important financial management step.

Several important changes in the District's financial management have occurred over the past few years. In 1976 the temporary commission on the financial oversight of the District of Columbia began its work which resulted in the implementation of a financial management system. The system includes expanded and improved computer technology, a shift to the use of more standardly acceptable accounting practices, and the conduct of an annual audit.

Because of these changes, the council has been better able to perform its financial oversight role and to provide the necessary checks and balances between the executive and legislative branches of government. The Council now has its own computer capability with which budget and financial records are processed and analyzed. The members of the Council continue to be vigilant in their fiscal oversight of the District's agencies.

The District of Columbia is being encouraged, through recent policy directives and Federal legislation, to shift to the municipal bond market for capital project funding. In the past, loans from the U.S. Tresury have financed the capital budget. Currently there is a cap of $145 million in capital borrowing from the Treasury. The District will therefore have to derive a portion of its capital funding in fiscal year 1983 from private sources to finance a capital budget which has totaled near $200 million in the past few years.

The Council Chairman does not support any provision of S. 1845 which might act to limit the ability of the public to express its will, either by referendum or initiation.

On behalf of the Chairman of the Council of the District of Columbia, I urge you to act favorable on S. 1845 which will provide the District with the power to proceed with necessary financial management plans.

Thank you for the opportunity to appear before you today on this important matter.

Senator MATHIAS. Our second panel today consists of Mr. Roswell Dikeman, Louis J. Ebert, and Franklin D. Raines.

Please come forward and identify yourselves for the benefit of the reporter.

Have you any preferred order of priority?

Mr. DIKEMAN. I suppose being the oldest, perhaps I could claim the right to proceed first.

Senator MATHIAS. We will not do it on that ground. We will do it alphabetically maybe, but you may proceed.

TESTIMONY OF ROSWELL C. DIKEMAN, ESQ., WILLKIE FARR & GALLAGHER, ACCOMPANIED BY LOUIS J. EBERT, ESQ., HUDSON, LEFTWICH & DAVENPORT; AND FRANKLIN D. RAINES, VICE PRESIDENT, LAZARD FRERES & CO.

Mr. DIKEMAN. Thank you, Mr. Chairman.

I have submitted written testimony.

Senator MATHIAS. Without objection, that will be included in full in the record at the conclusion of your testimony.

I have made the same offer to the other witnesses.

Mr. DIKEMAN. I will note for the record a couple of minor typographical changes, such as in the caption on the first page the date, and on page 9, the three references to H.R. 1807 should be S. 744.

Senator MATHIAS. Yes.

Mr. DIKEMAN. Otherwise it may stand as is.

We are fully prepared to answer any questions that you wish to direct toward us, Mr. Chairman.

Senator MATHIAS. Does anyone else want to make any opening statements?

Mr. RAINES. I also have provided a statement for the record. With regard to an opening statement, I can only say that from a financial perspective, S. 1845 makes some important changes in the provisions concerning the ability of the District to issue bonds on its own behalf and on behalf of other entities within the District.

The most important ones from our perspective are those that relate to the District's ability to provide credible assurances to bond purchasers that principal and interest payments will be made on a timely basis.

In that regard, the most important of those are making clear the District's obligation to pay debt service even where formal appropriations had not yet been completed.

Also important is the authority given to the District with regard to pledges of specific revenue as security for the bonds.

We think that those provisions, in particular, greatly enhance the ability of the District to issue general obligation and revenue bonds.

Senator MATHIAS. Let me ask you the same question that I asked the previous panel. That is, how do you see Senate bill 1845 and Senate bill 744 interacting?

Mr. RAINES. From a financial perspective, the two bills differ primarily in that S. 744 is aimed at dealing with the accumulated deficit problem. The mechanism by which it will be dealt with is very similar to provisions in S. 1845, in terms of the authority for pledges and other items.

But there is no mention in S. 1845 of the authority to fund outstanding deficits because the intention is for that to be a one-time endeavor. There is no intention of having a permanent authority to fund deficits into the future.

Senator MATHIAS. I hope not. According to our first panel, there will be no more deficits.

Mr. RAINES. They assure me exactly the same. I have spent a great deal of time looking at this.

Senator MATHIAS. If the record is not very clear on that, there will be no bill. I can promise you that.

Mr. RAINES. That is one reason that there are two separate pieces of legislation, to make it clear that there is no intention for there to be permanent authority to fund deficits. That is why S. 744 stands alone as a means of dealing with the past problems.

S. 1845 is meant to be permanent legislation, and it includes typical provisions useful to governments issuing bonds in the market.

That, I think, is the primary distinction between the two pieces of legislation. Otherwise they are compatible in their procedural mechanisms.

Mr. DIKEMAN. As far as the legal provisions are concerned, we have expressed the unqualified opinion on a number of occasions, which is also included in my written testimony, that the Home Rule Act, as the same would be amended by S. 1845, clearly does not authorize the District to issue bonds to fund any current ex-

pense deficits. Therefore, I would concur in Mr. Raines' statement, that S. 744 is still needed.

I might point out for the record that S. 744 preceded S. 1845 in the drafting process. There are some provisions in S. 744 which are somewhat duplicated in S. 1845, but no damage has been done. The two bills can be read in harmony without any severe conflicts.

Senator MATHIAS. Thank you.

Mr. DIKEMAN. Yes.

Senator MATHIAS. Will the technical amendments in S. 1845 affect the authority granted by S. 744?

Mr. DIKEMAN. No, Mr. Chairman, they would not affect the authority granted by S. 744. S. 744 stands on its own. It does provide specifically, for example, in section 4, that any bond act authorizing bonds pursuant to its authority for deficit funding must be adopted in the manner provided in the Home Rule Act, which would, of course, include any changes made by S. 1845.

It also goes on to say in subsection 4 that except as otherwise provided in S. 744, none of the provisions of the Home Rule Act relating to the authorization, issuance or payment of general obligations shall apply to S. 744.

For that reason S. 744 will stand on its own. There will be no conflict, as I indicated before, between the provisions of the two bills.

Senator MATHIAS. It is your considered opinion as counsel that there is a need for both of these pieces of legislation?

Mr. DIKEMAN. Yes, Mr. Chairman. I can state without qualification that there is a need for both pieces of legislation.

S. 1845 is needed to enable the District generally to access the market both as to general obligation and revenue bonds. S. 744 is necessary to enable the District to do so in the most advantageous manner.

Senator MATHIAS. With your experience in this field, do you think that the city could go to the bond market and be successful in marketing bonds without the enactment of Senate bill 1845?

Mr. DIKEMAN. Probably not. I say probably because I am not absolutely certain. It is my considered judgment there are enough infirmaties in the existing provisions of the Home Rule Act to lead me to conclude that a successful marketing of obligations by the District is highly unlikely, perhaps not impossible, but highly unlikely.

Senator MATHIAS. What about the time frame? How do you see the urgency of this affecting the whole program?

Mr. DIKEMAN. The answer to that depends on how soon the Congress wishes to place the District in a position where it can proceed on its own with capital financing, without any further dependence on the Treasury as the source for that financing.

So the urgency of S. 1845 is related to that question alone.

Senator MATHIAS. There are a number of instances in the bill where exemptions are made to the proscription in section 446 of the Home Rule Act that no moneys can be obligated or expended by the city unless approved by an act of Congress.

What effect would section 446, if not amended, have on the marketability of bonds issued by the city?

Mr. DIKEMAN. That, in my judgment, is perhaps one of the most important amendments made by this legislation. It is absolutely essential, in my view, to successfully access the market. We must be in a position to assure potential investors not only that they will be paid, but that they will be paid on time.

It is probably highly unlikely that Congress would refuse a debt service appropriation for the District. However, it is not highly unlikely that in the mix of things the District budget might not get adopted and approved by Congress in time to make those payments when they are due.

The possibility that this might occur, even if it is somewhat remote, is sufficient to cause investors to shy away from District bonds.

Senator MATHIAS. Section 1 of Senate bill 1845 expands the definition of capital projects. Is this, in light of your experience with other bond clients, consistent with the general practice among municipalities?

Mr. DIKEMAN. Yes, Mr. Chairman. I believe it expands the definition to some extent. The only real expansion occurs with respect to authorizing the issuance of bonds for the purchase of equipment and furnishings separate and apart from a physical betterment or improvement.

The other changes including the references to expenses incidental to projects and their financing, are more in the nature of clarifying amendments rather than substantial changes.

Senator MATHIAS. By including equipment within the definition of capital projects, the bill would authorize the city to borrow in order to procure major items, such as fire apparatus. Now, what kind of restraints are there on a city against using this authority to fund the purchase of equipment that may be major in cost, which is very common today, but which has a relatively short useful life?

In other words, what I am getting at: Could the city borrow on the long term to fund expenditures for equipment that will, in fact, as a practical matter, be only short term?

Mr. DIKEMAN. Technically, that would be possible, academically possible. However, there are two controls—really three controls. One is the good sense of the city not to jeopardize its credit by misusing it.

Second, the control of the rating agencies who would view with a somewhat jaundiced eye the misuse of the District's credit for purposes that are not appropriate under the given circumstances.

Third, the still continuing congressional review process, which will remain unabated, and will give Congress an opportunity, if it feels the District has acted improperly, to refuse to go along with the bond authorization.

Mr. RAINES. One thing that ought to be made clear on that provision is that there is nothing wrong with borrowing for equipment if the equipment has a 5-year life and you borrow for 5 years.

We generally assume with bonds you are talking about a 30-year issue or a 25- or 20-year issue. It may well be that you would borrow for a 2-year period, 3-, 4- or 5-year period. The matching of the bond term with the useful life of the item is something that the market is keenly aware of, and the rating agencies would certainly

alert the market to it if it appeared that what was really happening was a form of cash-flow financing.

To the extent that the abuse was extreme, I assume bond counsel would not authorize it under this provision because you really were not financing equipment. You were using the money for some other purpose.

Senator MATHIAS. Section 463 requires publication to set forth the text of each act authorizing the issuance of general obligation bonds. Is it your opinion that this is a necessary requirement?

Mr. DIKEMAN. Yes; this is a provision which is now in the Home Rule Act and has been since its inception and it has been used throughout the United States, maybe not in that particular form, but in concept. Almost every jurisdiction in my experience has a procedure by which the validity of bond issues may be laid at rest for all time.

Investors are not likely to look with any great degree of enthusiasm upon issues that may be subject to possible collateral legal attack at some future point in time after their issuance.

Senator MATHIAS. Is that advice consistent with the provisions of the bill which delete the time period within which the publication must be made?

Mr. DIKEMAN. The original Home Rule Act requires the Mayor to publish the notice within 5 days. Frankly, no one could come up with a good reason as to why that provision was put in in the first place. It serves absolutely no useful purpose. On the other hand it might cause legal problems due to simple clerical errors, such as would result if a clerk forgets to deliver a notice to a newspaper on time, causing the 5-day requirement to be missed.

Then what are the results? We do not know. Probably a court would hold that the provision is directory rather than mandatory, and the court would say that would not affect the validity of the act.

On the other hand, a court might very well hold that the late publication would defeat the operation of the 20-day short statute of limitations and thereby render the bond act subject to collateral attack at any time up to a point of expiration of the normal statute of limitation that is applicable.

We thought that provision should come out. It serves no purpose, and it might well cause mischief.

Senator MATHIAS. There is some exotic language in the bill. Section 7 refers to the Dillon estoppel clause. As an old city attorney, tell me about the Dillon estoppel clause.

Mr. DIKEMAN. Do you recall Dillon on municipal corporations?

Senator MATHIAS. Vaguely.

Mr. DIKEMAN. For many years, that was a standard text on municipal law. Judge Dillon, who coincidentally happened to be a founding father of one of our predecessor firms, is regarded as having as much claim as anyone to being the first bond attorney in the United States. This goes back to the 1880's and 1890's.

This device of estopping an issuer from contesting the validity of obligations which it has issued was his invention. The way he did this was to include in the text of the bonds a clause which contains a recitation and a representation by the issuer that everything has

been done which is legally necessary to be done, and no applicable statutory or constitutional limits have been violated.

Based on that representation, the investor would then invest in the bonds. The issuer could not thereafter be heard to deny its representations. It is commonly referred to as the Dillon estoppel clause.

That clause is one that has been utilized by bond counsel for nearly 100 years.

Senator MATHIAS. Well, let's get to the critical nature of the tax that would be envisioned by section 13, dealing with a special tax authority. Is there any restraint on the kind of tax used? I want to be very specific in this.

Would it be possible to implement or impose a commuter tax under this provision?

Mr. DIKEMAN. I fully understand the question. The answer is categorically no. The only kind of tax that could be imposed under the provision in question is a tax which the District otherwise has the lawful authority to impose.

It is not to be viewed in any way as a delegation to the District to impose any kind of taxes other than those which already exist, for which authority already exists.

Senator MATHIAS. Would you turn to section 9 and explain the purpose of the authorization of private negotiations or negotiated sales?

Mr. RAINES. Currently the charter requires that all bonds be sold at public sale. The problem that causes for a brand new issuer is that you have no market track record. You may have a more complicated bond than is normal. There may be advantages to the issuer to negotiate the sale of the bonds, as opposed to holding a public sale.

The negotiation permits you to work with a group of underwriters in fashioning the bond and in fashioning a marketing program. It could provide, in certain circumstances, a greater assurance of success for the bond issue.

In our view, this is a useful option for the District to have for the limited period of time that is necessary to gain the market acceptance, to sell bonds on a wide basis. It would be our recommendation to the District that the authority only be used if we make the judgment that it is necessary for a successful issuance of bonds.

If it is not necessary, then we would recommend, as we do as a general matter for general obligation bonds, that they be sold at a public sale.

You should not be misled by the words "public" and "private." The only difference is whether or not you cast your fate to the winds and send out notice to a group of bidders and say, "If interested, please bid," or whether you sit down with a group of underwriters who have already indicated that they are willing to bid and negotiate the terms on which they will bid, and sit down and actually negotiate the price.

In any event, all of the proceedings are public. All of the terms of the bond issue are public. The bonds would still be sold to the public.

Mr. DIKEMAN. I am a strong believer in the wisdom of requiring the competitive sale of general obligation bonds. There are some

States that do not always require that. I think the general experience has been that issuers tend to suffer as a result.

However, I do realize, and I do agree with Mr. Raines, that there are limited circumstances where a negotiated sale is a necessity to obtain the best price.

I think that we probably have a basis for such an exception in this instance for the reasons which he has stated. Therefore, I feel a very limited exception to the competitive sale requirement is justified.

Senator MATHIAS. Section 16 grants legal authority to depository banks to secure deposits on moneys held for payment or security of revenue bonds. Why do we need this?

Mr. DIKEMAN. There is a body of law which holds that banks do not have the inherent power to secure deposits by a pledge or by collateralization.

The provision in question was added simply to insure that depositories would have that power to secure deposits of moneys relating to revenue bonds if the parties so agree.

Senator MATHIAS. Section 16 goes on to rewrite the provisions of the Home Rule Act dealing with revenue bonds and notes. Does this put the city's credit on the line in issuing revenue bonds? Does it automatically secure the repayment of these loans?

Mr. DIKEMAN. No, sir. The provisions of 490 relating or prohibiting, I should say, the support of any revenue bonds by resorting to taxation are left intact.

I would refer you to subsection C of 490. That is not amended by this bill. That subsection says any and all revenue bonds, notes or other obligations shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit of the District and shall not constitute a debt of the District and shall not constitute the lending of the public credit as prohibited by section 602(a)(2).

I also refer you to section 484, which contains a negative statement as to the pledge of the credit of the United States. Specifically it declares the United States is not responsible or liable for payment of any bonds, be they GO's or revenue bonds.

That provision is similar to a provision that is contained in S. 744.

Senator MATHIAS. Section 16 permits a revenue bond to be secured with a mortgage of property, obviously excluding Federal property. Do you consider this a necessary and standard provision?

Mr. DIKEMAN. Yes, Mr. Chairman. That is a very common security device, particularly with reference to the financing of facilities in the utility area, such as sewers or water.

More often than not the security provisions of such bonds will include a physical mortgage of the facilities to be financed. The present lack of authority to give that type of security is a real disadvantage to the District since it is unable to offer the most marketable form of security for a revenue bond issue.

Maybe Mr. Raines may wish to comment.

Mr. RAINES. It also has a significant impact for revenue bonds where the District is the conduit issuer. For example, the George Washington University project is one where a very intricate provision had to be included, referring to future possible changes in the

District charter, to provide the type of security the lenders wanted, which was a simple mortgage on the building they were helping to finance.

It will be a major impediment to a large number of nonprofit entities if they are not able to give a mortgage on the facility being financed by the revenue bonds.

Senator MATHIAS. When we met before on this subject, we discussed the goal of moving the city out of the Treasury and onto the less expensive public markets. That, of course, is directed at both cash needs and capital improvements.

The Treasury has stated in testimony before the subcommittee that one way to insure the move is by adding surcharges on the city's use of borrowed Treasury funds and by charging interest on short-term borrowing.

Now, what would be the effect of such a move on the city's finances if we did that now, and would it affect the ability of the city to enter the market?

Mr. RAINES. I think the District has all of the incentives in the world that it needs to get into the market. The savings of roughly 2 percent on each and every bond issue that the District would issue on its own behalf is far and away sufficient incentive for the District to leave the Treasury.

A surcharge at this time, in my view, would simply be a penalty. The District has taken every step that is within its power to get into the market. To say now that any borrowing at this time would have a surcharge, even though the District does not have the legal tools to enter the market, would just be a penalty.

Whether a 2½-percent interest penalty is more incentive than a 2 percent interest penalty I do not know. I do know that for far smaller improvements and borrowing costs, local governments have been willing to issue bonds.

I anticipate that as soon as the District is able to, it will take advantage of the 2-percent savings which, over time, amounts to hundreds of millions of dollars. It is not merely $2 million in 1 year for 1 bond issue. Over a period of time, we are talking about hundreds of millions of dollars in savings.

The additional half a point, I believe, would not push the District any faster toward the goal of entering the market.

Senator MATHIAS. I do not want to be a pessimist this morning or cast any gloom over the proceedings, but what is your judgment as to the best time for the Treasury to close the window? When would you slam it shut?

In slamming it shut, what proposal do you have—not necessarily as an amendment to this bill, but a proposal generally speaking—that would move the city out of the Treasury and would provide an opportunity to get back in if the bond offering is not successful?

Mr. RAINES. I think from the standpoint of the United States that the ideal form of easing the District from the Treasury would be one that would give them the authority as soon as possible to enter the market, and at the point, as determined by the Congress, that the District has successfully financed its capital budget in the market for at least a period of 2 years the Congress would cease appropriations of Treasury loans.

Through that mechanism the District would not be able to borrow from the Treasury and would be required to go into the market for its capital funds after having proved its ability to do so.

It would also leave the Congress with the option that should something occur in the future to prevent the District from financing its capital program, the Congress in its wisdom could reopen access to the Treasury.

I think the elimination of appropriations alone that authorize the Treasury to provide capital funds would be a more than adequate way to encourage the District to use its access to the market. The most important thing would be to get the District in the market the first time.

Once the District is in the market, once this legislation as well as S. 744 has been enacted, the benefits of being in the market are going to be so great that there is no question in my mind that the District would not come back to the Treasury seeking to borrow from the Treasury. It is almost inconceivable there would be a time when Treasury would be prepared to lend at a rate less than the District could get in the market by issuing its own bonds.

Senator MATHIAS. Section 12 authorizes borrowing in anticipation of revenues. I assume this is a step in the direction of filling the gap in anticipation of the short-term window closing; is that correct?

Mr. RAINES. It mirrors legislation that is in virtually every other jurisdiction. It takes into account the fact that a municipality's revenue often comes in at an uneven pattern; whereas spending may be very even. So it is merely a short-term financing measure to finance revenue within any fiscal year.

It is really a means to balance out the availability of resources for the District within a fiscal year that could not go beyond the fiscal year. All it really is is a cash management tool.

Mr. DIKEMAN. I might point out, Mr. Chairman, that in that provision of the bill it would add an exception to section 446 as to the appropriation process, the theory of that being the cash flow problems often arise on a rather short notice. They require prompt action.

Let me back up. It exempts it from the congressional review process, as well as the payment of the section 446 process. If the requirements were continued in the issuance of the notes, it would be subject to the 30-day layover provision, and the District might well find itself in somewhat an impossible position in being unable to issue the notes in a timeframe adequate to meet the cash-flow problem with which they are forced to deal.

Senator MATHIAS. Do you think that this particular kind of borrowing may be necessary in the current fiscal year?

Mr. DIKEMAN. That I would have to defer to Ms. Washington or someone else.

Senator MATHIAS. Is there any likelihood a cash-flow problem might occur that would necessitate issuing the notes under 472?

Mr. RAINES. Mr. Chairman, the same cash-flow trough will occur just as it has in past summers and if the District does not have the authority to fill that trough with notes, it will have to utilize the authority to borrow short term from the Treasury and repay that by the end of the fiscal year, as it has done in previous years.

Last year that total amount was about $80 million to cover the cash flow. It was repaid prior to the end of the fiscal year.

I might note, however, in the event the District is permitted to use the authority under S. 744, it is anticipated that funding the deficit will substantially reduce the cash-flow trough and substantially reduce the need to utilize a short-term financing.

One final note on that is the amendments in this legislation simply amend the current provisions in the charter which already provide for the ability of the District to borrow on a short-term basis for cash flow.

Now, going back, Mr. Chairman, to a prior question, I just wanted to add this. On the incentive for the District to enter the bond market, an analysis was done by the District for the borrowing done from the Treasury in the last 5-year period, basically in the early years of home rule. If the District had been able to issue bonds immediately upon the enactment of the home rule charter, just for that period, the District would have saved between $22 and $48 million to date.

Over the life of the bonds, the District would have saved $200 to $400 million. So in terms of incentives, I cannot imagine any greater incentive for the District to utilize this borrowing authority than the enormous sums of money that are paid unnecessarily.

The Treasury does not want the District to borrow nor does it desire to make money off the District. Certainly the District is in no position to want to pay more for borrowing than it absolutely has to.

With these enormous sums of money already being lost to the District to increase that loss from $200 to $250 million by adding a surcharge, would not in my view add any additional incentive.

Senator MATHIAS. Thank you very much.

Do any of you have anything further to add to the testimony this morning?

Mr. DIKEMAN. Thank you, Mr. Chairman, no.

Mr. EBERT. No.

Mr. RAINES. No, sir.

Senator MATHIAS. I see experienced counsel has not volunteered.

Mr. DIKEMAN. I learned that in the Army.

Senator MATHIAS. Thank you very much.

[The prepared statements of Mr. Dikeman and Mr. Raines follow:]

PREPARED STATEMENT OF ROSWELL C. DIKEMAN

Mr. Chairman, my name is Roswell C. Dikeman and I am a partner of the law firm of Willkie, Farr & Gallagher, with offices located at 153 East 53rd Street, in New York City, and 818 Connecticut Avenue, N.W., in Washington, D.C. We, together with the law firm of Hudson, Leftwich and Davenport, located at 1101 15th Street, N.W., in Washington, D.C., have served as co-bond counsel to the District of Columbia (the "District") since the inception of Home Rule in January of 1975. Mr. Louis J. Ebert representing the latter firm is with me today.

My testimony will be related to S. 1845 (the "Bill"), which was prepared with our assistance at the request of the District. Incidentally, when I refer to action taken or opinions expressed, it should be understood to mean the joint action or opinion of both my firm and Mr. Ebert's firm.

The Bill would revise various portions of Part E of Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, which I shall hereinafter refer to as the "District Charter", to resolve several ambiguities and elimi-

nate certain legal impediments relating to the issuance of both general obligation and revenue bonds and notes by the District.

Although the District Charter, as originally enacted, provided the District with statutory authority to issue tax-exempt bonds and notes, no such obligations have been issued. This can be attributed in part to omissions, ambiguities and restrictions contained in the District Charter which, in our judgment and in the judgment of the District's financial consultant, seriously impede the ability of the District to structure a marketable issue.

In my testimony, I will describe in general terms the most important provisions of the Bill, which we believe will furnish the District with the legal ability to implement the Home Rule powers granted to it with respect to the public marketing of its obligations.

Under Section 461(a) of the District Charter the District is empowered to issue general obligation bonds to pay the cost of acquiring or undertaking its various "capital projects" as defined in Section 103(8). Section 1 of the Bill amends this definition to include within the term "capital project" certain costs not expressly enumerated at present.

It is not clear whether the current definition permits the District to utilize bond proceeds to reimburse preliminary expenses for planning, studies and similar items incurred before the capital project to which they relate was authorized and a bond act adopted for its financing. Often, the cost of preliminary planning will be substantial and must be incurred in order to estimate the cost of a capital project, thereby forming a basis for the adoption of a financing authorization. Such costs are a legitimate part of the total cost of the project, yet they must be paid before the financing of the project is accomplished. One of the amendments made by Section 1 of the Bill would give express sanction to use of bond proceeds to make reimbursements for amounts previously expended for the payment of preliminary costs.

The existing definition of "capital project" makes no mention of other categories of incidental expenses or to the payment of incidental financing costs, including interest during construction and bond insurance, although all of such items are normally treated as capital costs. The amended definition resolves this omission by including in the definition of "capital project", costs incidental to the project and its financing.

Finally, Section 103(8) now limits the District to financing equipment for an improvement or betterment when first erected or acquired. Thus, bonds may not be issued for re-equipping or furnishing a District owned building to be substantially rehabilitated, although the cost of such rehabilitation itself might be financed in this manner. Neither could bond proceeds be used to purchase equipment or furnishings alone, when not connected with the erection or acquisition of a betterment or improvement, although it would seem appropriate to utilize long term financing for such substantial and long term items as fire equipment, computer hardware and heavy-duty construction equipment. This omission would be corrected by expanding the definition of "capital project" to include the purchase of equipment or furnishings.

Section 2 of the Bill amends Section 446 of the District Charter to cross reference certain exceptions provided to the requirements of the fourth sentence of such Section. The fourth sentence presently prohibits the obligation or expenditure of any amount by any officer or employee of the District "unless such amount have been approved by Act of Congress, and then only according to such Act." Since there are no provisions elsewhere in the District Charter providing for an automatic or continuing appropriation for the payment of debt service on District obligations such as those applicable to the payment of Federal indebtedness, it seems clear that payments of debt service by the District would be contingent upon amounts being included therefor in the annual appropriation Act adopted by Congress. Accordingly, a District bond or note holder would have no assurance that moneys legally will be available each year to permit timely payment of his obligation. While it is unlikely that Congress would refuse to make an appropriation for the payment of debt service, the possibility, however remote, that such approval would be withheld or that it might be delayed due to some unrelated event, will materially adversely affect the marketability of District obligations. In our opinion and in the opinion of the District's financial consultant it is essential to the successful public offering of District obligations that the formality of annual Congressional enactment of debt service appropriations be eliminated. Such elimination would be accomplished by amendments made to Sections 467(d), 471(c), 472(d)(2), 483(d) and 490 (f) and (g).

Additionally, the foregoing amendments would make clear that the provisions of Section 446 of the District Charter will not be construed as prohibiting the obligation or expenditure of moneys to secure any obligation or the obligation or expendi-

ture of the proceeds of revenue bonds or notes. Relative to the last mentioned exception, the viability of a revenue bond issue usually is dependent upon timely completion of the project financed so as to insure a flow of revenues sufficient to meet the payment of the obligations undertaken by the issuer as they mature. Any delay in the prompt expenditure of bond proceeds needed to complete the project could be disastrous. Accordingly, it is essential to assure bondholders that bond proceeds will be available as needed.

Paragraph (6) of Section 462 of the District Charter authorizes the District Council, in its discretion, to submit the question of issuing general obligation bonds to a referendum. It is not clear whether it was intended that the referendum be held before or after the submission of the bond act to Congress for its review. The amendment proposed by Section 5 of the Bill lays this issue at rest by specifically stating that any election on the question of issuing general obligation bonds must be held prior to the Congressional review process. This would seem to be consistent with the probable intent of Congress in enacting recent amendments to Section 602(c) of the District Charter. This Section of the Bill also would provide that those provisions of a bond act relating to the time and manner of holding the referendum are to take effect immediately upon the enactment of such act without being subject to the Congressional review process. This, of course, is essential if the election is to be held before the submission of the bond act to Congress. Such provisions would in no way affect Congressional review of the substantive provisions of the bond act in the event of its approval at the referendum.

Section 463 of the District Charter directs the Mayor to publish a notice setting forth the text of each act aurhorizing the issuance of general obligation bonds. Such Section provides that the Mayor shall make such publication within five days after the "enactment" of the bond act. The notice required to be published with the bond act must state that the act as published "has become effective". This Section, in its present form, is not clear as to the exact time when the notice should be published, since "enactment" of an act is not synonymous with an act becoming "effective". Also, a question exists as to whether the notice is to be published prior to or after a referendum in those instances where the Council has determined to call an election on a bond issue.

Another question exists as to whether the provision which states that the Mayor shall publish the notice within five days after enactment is directory or mandatory (a "directory" provision in a statute is one the observation of which is not necessary to the validity of the proceedings to which it relates). Although we believe that a failure to publish within the time stipulated (as distinct from a complete failure to publish) would not affect the validity of the bond act, a court might rule that failure to publish within five days would render inoperative the short period of limitation for contesting the validity of the bond authorization proceedings as provided in Section 464. In order to avoid any controversy on these points and inasmuch as the direction to publish within a particular time period appears to serve no useful purpose, such provision would be eliminated. In its place the Section would provide that neither the failure to publish the notice nor any error in publication shall impair the effectiveness of the bond act in question or the validity of any bonds issued pursuant thereto. It should be noted, however, that a failure to publish the notice would, and an error in publication might continue to eliminate the application of the short period of limitation for contesting validity provided in Section 464.

As noted, Section 464 of the District Charter provides a twenty day short period of limitation for contesting the validity of general obligation bond proceedings, which period is set in motion by the first publication of the notice specified in Section 463. In addition to conforming Section 464 to the amendendments made to Section 463 the Bill makes one substantive change by virtue of new subsection (b). The existing procedure designed to forestall collateral attacks upon the validity of bond authorization proceedings has one major flaw. Events transpiring subsequent to the adoption of the bond act and the publication of the notice are not covered. Accordingly, a court most likely would hold, in an appropriate case, that the publication of the Section 463 notice would not stop an interested party from contesting the validity of general obligation bonds due to an alleged failure to comply with statutory requirements in connection with the issuance of the bonds. New subsection (b) added by the Bill to Section 464 eliminates this possibility by stipulating that after the expiration of the twenty day estoppel period no court will have jurisdiction in any action contesting the validity of the bonds if the bonds were purchased in good faith for fair value and the bonds contain the so-called Dillon estoppel clause set forth in such subsection. It is further provided that the recitations in such estoppel clause shall bind the District.

Section 465 of the District Charter now stipulates that annual principal and interest payments on an issue of general obligation bonds must be substantially equal. A variance of plus or minus three per centum of the total authorized amount of the issue is permitted. The District has been advised that this limitation would substantially impede its ability to arrange its overall debt service payments in a manner consistent with sound financial planning and might adversely affect the marketability of a given issue by preventing the use of a maturity schedule compatible with the needs of investors. Section 8 of the Bill, in addition to several other technical changes, would delete the level debt service requirement.

Section 466 of the District Charter requires that all general obligation bonds be sold at competitive sale. Although this is a common requirement for this type of municipal obligation the District's financial consultant has recommended that, due to the existing state of the District's finances and its lack of any track record in the municipal bond market, it might become advisable during the next several years to sell general obligation bonds by negotiated sale rather than by competitive bid in those cases where the bonds are additionally secured by a pledge of District revenues as authorized by new Section 467. Accordingly, new subsection (b) of Section 466 would permit negotiated sales of such additionally secured bonds until October 1, 1984.

Section 10 of the Bill adds a new Section 467 specifically authorizing the District to additionally secure general obligation bonds by creating a security interest in favor of bondholders in specified District revenues. The District's financial consultant is of the opinion that this type of double-barrelled bond may be necessary to insure the successful marketing of District general obligation bonds during the next few years for the reasons just stated.

In substance the provisions of Section 467 follow similar provisions appearing in S. 744 (the so-called deficit funding legislation). However, I should emphasize that S. 1845 does not permit the District to issue general obligation bonds to fund a current budget deficit. In other words, S. 1845 does not eliminate the necessity for S. 744, although it would be possible to modify certain of the technical provisions in S. 744 in the event of the passage of S. 1845.

The Bill in addition to creating the exception to Section 446, proposes an important change in Section 472 of the District Charter. This Section authorizes the issuance of general obligation notes in anticipation of the collection or receipt of revenues of a fiscal year. Subsection (d)(1) of this Section, as amended, would exempt any act authorizing the issuance of revenue anticipation notes from the Congressional review process provided for in Section 602(c). This is a practical necessity if this type of financing is to be utilized for the purpose intended, namely to meet cash flow problems which might well arise as the result of unanticipated events. If an act authorizing such notes is adopted subject to the thirty day Congressional review process there would be a substantial delay before the notes could be issued, so that the District might be unable to respond to a temporary cash flow crisis. I respectfully submit that the District must be placed in a position ro react expeditiously to cash flow problems if dependence upon the U.S. Treasury is to be terminated.

The Bill would substantially rewrite Section 481 and add a new Section 483 to the District Charter relating generally to the payment of general obligation bonds and notes.

As revised, Section 481 would authorize the District Council, in its discretion, to include in any general obligation bond act provision for the annual levy of a special tax or charge to the extent necessary to pay the bonds. The proceeds of each such special tax or charge would be kept in a separate debt service fund applicable only to the issue for which authorized.

New Section 483 strengthens the existing provisions of the District Charter to insure the payment of the principal of and interest on general obligation bonds and notes when due.

In summary, the new Section 483 mandates the District Council to provide adequate funds for debt service in the annual budget, directs the Mayor to insure the payment of all maturing principal and interest on general obligation bonds and notes, including a direction to pay such principal and interest from any funds not otherwise legally committed, and directs the Mayor, in the event no other funds are available, to pay maturing principal and interest on such bonds and notes by utilizing the annual Federal payment first for such purpose.

Bill Section 15 adds a new Section 484 affirmatively stating that the faith and credit of the United States is not pledged to the payment of any principal or interest on any bond, note or other obligation issued by the District. The United States is declared not to be responsible or liable for any such payment.

Bill Section 16 contains a general revision of Section 490 of the District Charter relating to the issuance of revenue bonds and notes. The revisions are designed to remove several ambiguities, restrictions and limitations currently contained in this Section. Among the more important substantive changes which would be made are the following:

New subsection (a) of Section 490 would permit the District to issue revenue bonds or notes for the purpose of refinancing or to assist in the refinancing of undertakings in the areas enumerated. For example, several private colleges and universities within the District have expressed an interest in refinancing existing indebtedness incurred for various projects, as is now allowed by many state laws which permit conduit financing for institutions of this type. Because the interest rate payable on tax-exempt District revenue bonds might be substantially less than the interest being paid on outstanding conventional loans, the refinancing of such debt could be financially advantageous to the institutions concerned. We have expressed the opinion that such refinancing is not permissible under the District Charter as currently written.

New subsection (a) also clarifies the powers of both the District Council and the Mayor with respect to security agreements and the creation of security interests.

New paragraph (4)(B) of this subsection is typical of many revenue bond acts in other jurisdictions. In substance it provides that any security interest created in favor of bond or note holders shall be valid and enforceable without any physical delivery of the property in question or any further action. Also, in order to perfect such security interest it will not be necessary to file or record any statement or document relating thereto. New paragraph (4)(C) furnishes legal authority for depository banks to secure deposits of moneys held for the payment or security of revenue obligations in such manner as may be agreed upon with the District.

Subsection (b) now prohibits the mortgaging of property as additional security for an issue of revenue bonds or notes except in certain enumerated instances. In recognition of the common practice of securing revenue bonds issued by municipalities for revenue producing improvements by a mortgage of the improvements financed, this limitation would be eliminated. The prohibition against the mortgaging or pledging of property of the United States is continued, however, in subsection (b).

Section 19 of the Bill covers a special situation with respect to a proposed issue of revenue bonds by the District to finance facilities for the George Washington University pursuant to Section 490 of the District Charter. The proceedings relating to such proposed bonds provide, subject to certain conditions, for the substitution of a mortgage of real property for a pledge of certain revenues in the event this type of security becomes legally permissible. Section 19 of the Bill would insure that this provision in the bond proceedings may become operative notwithstanding that such proceedings were adopted prior to the effective date of this Bill.

PREPARED STATEMENT OF FRANKLIN D. RAINES

Mr. Chairman and Members of the Committee, I would like to thank you for this opportunity to testify on S. 1845, a bill to amend the debt issuance provisions of the District of Columbia charter. As you know, Lazard Freres has served as financial advisor to the District since 1979. Since that time we have advised the District on what we believed to be the financial, legal and management prerequisites to the efficient and successful sale of District securities in the public bond market. One of our first efforts was a review of the debt issuance provisions of the Charter.

S. 1845 is the joint product of professionals from the District Government, bond counsel, our office and the staff of this committee. Its major purpose is to modify, clarify and strengthen the District charter so as to enchance the marketability of District bonds and notes. The revisions prepared have been kept to the minimum necessary to permit the District to finance its capital program at the lowest possible interest costs.

From a financial perspective the most important provisions of S. 1845 are those which permit the District to provide credible assurances to potential bond purchasers that principal and interest payments will be paid on a timely basis. The bill makes clear the obligation of the District to pay debt service even where the formal appropriations process has not been completed. This is consistent with normal local and federal practice for long-term obligations. The bill also provides the option to the District to additionally secure its general obligation bonds with the pledge of a specified revenue. Those provisions should significantly improve the marketability of District bonds.

The bill also clarifies and improves the District's authority to issue revenue bonds. Again the most important provisions from a financial perspective are those which expand the security for the bonds and which protect the payment of debt service from possible delays in the appropriations process.

On the whole we believe that S. 1845 provides an exellent legal framework for implementing the bond issuance authority of the District. Of course, the ability to sell a bond issue will depend on more than legal authority. The District, or the entity benefiting from revenue bonds, will need to demonstrate the financial strength necessary to obtain a satisfactory credit rating. The District Government has developed a credible plan for long-term financial stability including annual audits, balanced budgets and funding of its accumulated deficit. That plan together with the bill before the committee, in our view, will provide the necessary foundation for the issuance of District of Columbia capital project bonds in the near future.

I would be happy to answer any questions.

Senator MATHIAS. The subcommittee has also a very supportive and helpful statement from the Reverend John P. Whalen, executive director of the Consortium of Universities of the Washington Metropolitan Area, and I will direct that it be included as a part of the record.

That completes our hearing on this legislation.

The subcommittee will stand in recess subject to the call of the Chair.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF REV. JOHN P. WHALEN, EXECUTIVE DIRECTOR, CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Mr. Chairman and members of the Committee:

I should like to introduce myself for the record. I am Reverend John P. Whalen, the Executive Director of the Consortium of Universities of the Washington Metropolitan Area. I come to you today representing nine major institutions of higher education in Washington, D.C. that combined employ 38,000 employees (which represents to the District of Columbia approximately 6.1% of the total District of Columbia work force), enrolls approximately 92,000 students and contributes approximately $1.6 billion dollars per year net to the metropolitan Washington economy. I speak in the name of the presidents of each of these institutions who have authorized me to do so.

We should very much like to encourage the Committee and later the entire Congress to review with favor and pass as quickly as possible S. 1845. This Bill has been introduced for the Committee on Governmental Relations by Mr. Mathias, Mr. Eagleton and Mr. Rudman.

While the Home Rule Charter has provided from the beginning the ability of certain classes of organizations to request the District of Columbia to issue tax-exempt revenue bonds on their behalf, and since universities are one of those classes, we are particularly interested in allowing for a more expedited issuance of such bonds now impeded by certain technical problems in the Home Rule Charter. S. 1845 would cure those technical difficulties and make the ability of the District of Columbia to issue such bonds the same as that enjoyed by virtually every other jurisdiction in the United States.

S. 1845 authorizes the imposition of a mortgage on property or improvements for colleges as well as others, a provision common throughout the country and essential in the District of Columbia to allow our colleges and universities to continue to be competitive with our sister institutions across the country who now enjoy this privilege.

The Bill also provides for a consolidation of existing debt on the part of colleges and universities and others and an ability to refinance that debt through the proceeds of bond issues.

Intensive study has been carried on by District of Columbia officials and expert bond counsel (Wilkie, Farr and Gallagher in association with Hudson, Leftwich and Davenport) resulting in the provisions in S. 1845 that now appear to be satisfactory to all affected parties and to bond experts in the Congress and to Congressional legislative counsel. We would ask for your favorable consideration of this Bill as soon as possible since two of our universities are relying on the possibility of bond acts and issues (including the provisions of S. 1845) for buildings already under construction.

It is our belief that the measure is good for the city, and good for those categories of organizations enabled to issue bonds with the approval of the Council, under the provisions of the Home Rule Charter and this Bill. We are very grateful for your attention and kind consideration and know that we can count on your help in this matter of crucial importance to our local colleges and universities.

II

97TH CONGRESS
1ST SESSION

S. 1845

To amend the District of Columbia Self-Government and Governmental Reorganization Act and the charter of the District of Columbia with respect to the provisions allowing the District of Columbia to issue general obligation bonds and notes and revenue bonds, notes, and other obligations.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 12 (legislative day, NOVEMBER 2), 1981

Mr. MATHIAS (for himself, Mr. EAGLETON, and Mr. RUDMAN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To amend the District of Columbia Self-Government and Governmental Reorganization Act and the charter of the District of Columbia with respect to the provisions allowing the District of Columbia to issue general obligation bonds and notes and revenue bonds, notes, and other obligations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 103(8) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-122(8)) is amended to read as follows:

"(8) The term 'capital project' means any physical public betterment or improvement, the acquisition of property of a permanent nature, or the purchase of equipment or furnishings, and includes (A) costs of any preliminary plans, studies, and surveys in connection with such betterment, improvement, acquisition, or purchase, (B) costs incidental to such betterment, improvement, acquisition, or purchase, and the financing thereof, including the cost of any election, professional fees, printing or engraving, production and reproduction of documents, publication of notices, taking of title, bond insurance, and interest during construction, and (C) the reimbursement of any fund or account for amounts expended for the payment of any such costs."

SEC. 2. Section 446 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–224) is amended in the fourth sentence by striking out "No" and inserting in lieu thereof "Except as provided in section 467(d), section 471(c), section 472(d)(2), section 483(d), and subsections (f) and (g)(3) of section 490, no".

SEC. 3. Section 448 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–226) is amended—

(1) by inserting "(a)" after "SEC. 448."; and

(2) by adding at the end the following new subsection:

"(b) Notwithstanding subsection (a), the Mayor may make any payments required by section 483(b) and take any actions authorized by an act of the Council under section 467(b)(5) or under subsection (a)(4)(A), or subsection (e)(6), of section 490.".

SEC. 4. Section 461(a) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–241(a)) is amended in the second sentence by striking out "payable annually or semi-annually, at such rate" and inserting in lieu thereof "payable on such dates, at such rate or rates".

SEC. 5. Section 462 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–242) is amended—

(1) by striking out the title of such section and inserting in lieu thereof the following new title:

"CONTENTS OF BORROWING LEGISLATION AND ELECTIONS ON ISSUING GENERAL OBLIGATION BONDS";

(2) by inserting "(a)" after "SEC. 462.";

(3) in paragraph (6)—

(A) by striking out the comma which appears after "discretion"; and

(B) by inserting "the date of such election," after "holding such election,"; and

(4) by adding after paragraph (6) the following new subsections:

"(b) Any election held on the question of issuing general obligation bonds must be held before the act authorizing the issuance of such bonds is transmitted to the Speaker of the House of Representatives and the President of the Senate pursuant to section 602(c).

"(c) Notwithstanding section 602(c)(1), the provisions required by paragraph (6) of subsection (a) to be included in any act authorizing the issuance of general obligation bonds shall take effect on the date of the enactment of such act.".

SEC. 6. Section 463 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–243) is amended to read as follows:

"PUBLICATION OF BORROWING LEGISLATION

"SEC. 463. (a) After each act of the Council of the District under section 462(a) authorizing the issuance of general obligation bonds has taken effect, the Mayor shall publish such act at least once in at least one newspaper of general circulation within the District together with a notice that such act has taken effect. Each such notice shall be in substantially the following form:

"'NOTICE

"'The following act of the Council of the District of Columbia (published with this notice) authorizing the issuance of general obligation bonds has taken effect. As provided in the District of Columbia Self-Government and Governmental Reorganization Act, the time within which a suit, action, or proceeding questioning the validity of such bonds may be commenced expires at the end of the twenty-day period beginning on the date of the first publication of this notice.

"'_____ _____,

"'Mayor.'

"(b) Neither the failure to publish the notice provided for in subsection (a) nor any error in any publication of such notice shall impair the effectiveness of the act of the Council authorizing the issuance of such bonds or the validity of any bond issued pursuant to such act.".

SEC. 7. Section 464 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47-244) is amended to read as follows:

"SHORT PERIOD OF LIMITATION

"SEC. 464. (a) At the end of the twenty-day period beginning on the date of the first publication pursuant to section 463(a) of the notice that an act authorizing the issuance of general obligation bonds has taken effect—

"(1) any recital or statement of fact contained in such act or in the preamble or title of such act shall be deemed to be true for the purpose of determining the validity of the bonds authorized by such act, and the District and all others interested shall be estopped from denying any such recital or statement of fact; and

"(2) such act, and all proceedings in connection with the authorization of the issuance of such bonds including any election held on the question of issuing such bonds, shall be deemed to have been duly and regularly taken, passed, and done by the District, in compliance with this Act and all other applicable laws, for the purpose of determining the validity of such act and proceedings; and no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of such act or proceedings except in a suit, action, or proceeding commenced before the end of such twenty-day period.

"(b) At the end of the twenty-day period beginning on the date of the first publication pursuant to section 463(a) of the notice that an act authorizing the issuance of general obligation bonds has taken effect, no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of any general obligation bond issued pursuant to such act if—

"(1) such general obligation bond was purchased in good faith and for fair value; and

"(2) such general obligation bond contains substantially the following statement which shall bind the District of Columbia:

'It is hereby certified and recited that all conditions, acts, and things required by the District of Columbia Self-Government and Governmental Reorganization Act and other applicable laws to exist, to have happened, and to have been performed precedent to and in the issuance of this bond exist, have happened, and have been performed and that the issue of bonds, of which this is one, together with all other indebtedness of the District of Columbia, is within every debt and other limit prescribed by law.'".

SEC. 8. Section 465 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–245) is amended to read as follows:

"ISSUANCE OF GENERAL OBLIGATION BONDS

"SEC. 465. (a)(1) After an act of the Council authorizing the issuance of general obligation bonds under section 461(a) takes effect, the Mayor may issue such general obligation bonds as authorized by such act of the Council. An issue of general obligation bonds may be all or any part of the aggregate principal amount of bonds authorized by such act.

"(b) The principal amount of the general obligation bonds of each issue shall be payable in annual installments beginning not more than three years after the date of such bonds and ending not more than thirty years after such date.

"(c) The general obligation bonds of each issue shall be executed by the manual or facsimile signature of such officials as may be designated to sign such bonds by the act of the Council authorizing the issuance of the bonds, except that at least one such signature shall be manual. Coupons attached to the bonds shall be authenticated by the facsimile signature of the Mayor unless the Council provides otherwise.".

SEC. 9. Section 466 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–246) is amended—

(1) by striking out the title of the section and inserting in lieu thereof "PUBLIC OR PRIVATE SALE";

(2) by striking out "SEC. 466. All" in the first sentence and inserting in lieu thereof "SEC. 466. (a) Except as provided in subsection (b),"; and

(3) by adding at the end the following new subsection:

"(b) Any issue of general obligation bonds which is sold before October 1, 1984, and which is additionally secured by a security interest created in District revenues under section

467(a) may be sold at either a public sale under subsection (a) or at a private sale on a negotiated basis in such manner as the Mayor may determine to be in the public interest.".

SEC. 10. Subpart 1 of part E of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–241 et seq.) is amended by inserting after section 466 the following new section:

"AUTHORITY TO CREATE SECURITY INTERESTS IN DISTRICT REVENUES

"SEC. 467. (a) An act of the Council authorizing the issuance of general obligation bonds under section 461(a) may create a security interest in any District revenues as additional security for the payment of the bonds authorized by such act.

"(b) Any such act creating a security interest in District revenues may contain provisions (which may be part of the contract with the holders of such bonds)—

"(1) describing the particular District revenues which are subject to such security interest;

"(2) creating a reasonably required debt service reserve fund or any other special fund;

"(3) authorizing the Mayor of the District to execute a trust indenture securing the bonds;

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"(4) vesting in the trustee under such a trust indenture such properties, rights, powers, and duties in trust as may be necessary, convenient, or desirable;

"(5) authorizing the Mayor of the District to enter into and amend agreements concerning (A) the custody, collection, use, disposition, security, investment, and payment of the proceeds of the bonds and the District revenues which are subject to such security interest, and (B) the doing of any act (or the refraining from doing any act) that the District would have the right to do in the absence of such an agreement;

"(6) prescribing the remedies of the holders of the bonds in the event of a default; and

"(7) authorizing the Mayor of the District to take any other actions in connection with the issuance, sale, delivery, security, and payment of the bonds.

"(c) Notwithstanding article 9 of title 28 of the District of Columbia Code, any security interest in District revenues created under subsection (a) shall be valid, binding, and perfected from the time such security interest is created, with or without the physical delivery of any funds or any other property and with or without any further action. Such security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to such security interest is recorded or filed. The lien created by such

security interest is valid, binding, and perfected with respect to any individual or legal entity having claims against the District, whether or not such individual or legal entity has notice of such lien.

"(d) The fourth sentence of section 446 shall not apply to any obligation or expenditure of any District revenues to secure any general obligation bond under subsection (a).".

SEC. 11. Section 471 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–247) is amended to read as follows:

"BORROWING TO MEET APPROPRIATIONS

"SEC. 471. (a) In the absence of unappropriated revenues available to meet appropriations made pursuant to section 446, the Council may by act authorize the issuance of general obligation notes. The total amount of all such general obligation notes originally issued during a fiscal year shall not exceed 2 per centum of the total appropriations for the District for such fiscal year.

"(b) Any general obligation note issued under subsection (a), as authorized by an act of the Council, may be renewed. Any such note, including any renewal of such note, shall be due and payable not later than the last day of the fiscal year occurring immediately after the fiscal year during which the act authorizing the original issuance of such note takes effect.

"(c) The fourth sentence of section 446 shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any general obligation note issued under subsection (a).".

SEC. 12. Section 472 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–248) is amended to read as follows:

"BORROWING IN ANTICIPATION OF REVENUES

"SEC. 472. (a) In anticipation of the collection or receipt of revenues for a fiscal year, the Council may by act authorize the issuance of general obligation notes for such fiscal year, to be known as revenue anticipation notes.

"(b) The total amount of all revenue anticipation notes issued under subsection (a) outstanding at any time during a fiscal year shall not exceed 20 per centum of the total anticipated revenue of the District for such fiscal year, as certified by the Mayor under this subsection. The Mayor shall certify, as of a date which occurs not more than fifteen days before each original issuance of such revenue anticipation notes, the total anticipated revenue of the District for such fiscal year.

"(c) Any revenue anticipation note issued under subsection (a) may be renewed. Any such note, including any renewal of such note, shall be due and payable not later than

the last day of the fiscal year during which the note was originally issued.

"(d)(1) Notwithstanding section 602(c)(1), any act of the Council authorizing the issuance of revenue anticipation notes under subsection (a) may take effect on the date of the enactment of such act.

"(2) The fourth sentence of section 446 shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any revenue anticipation note issued under subsection (a).".

SEC. 13. Section 481 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–251) is amended to read as follows:

"SPECIAL TAX

"SEC. 481. (a) Any act of the Council authorizing the issuance of general obligation bonds under section 461(a) shall provide for the annual levy of a special tax or charge, if the Council determines that such tax or charge is necessary. Such tax or charge shall be levied, without limitation as to rate or amount, in amounts which together with other District revenues available and applicable will be sufficient to pay the principal of and interest on such general obligation bonds as they become due and payable. Such tax or charge shall be levied and collected at the same time and in the

same manner as other District taxes are levied and collected, and when collected shall be set aside in a separate debt service fund and irrevocably dedicated to the payment of such principal and interest.

"(b) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in each debt service fund pursuant to subsection (a).".

SEC. 14. Subpart 3 of part E of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–251) is amended by adding after section 481 the following new sections:

"FULL FAITH AND CREDIT OF THE DISTRICT

"SEC. 482. The full faith and credit of the District is pledged for the payment of the principal of and interest on any general obligation bond or note issued under section 461(a), section 471(a), or section 472(a), whether or not such pledge is stated in such bond or note or in the act authorizing the issuance of such bond or note.

"PAYMENT OF THE GENERAL OBLIGATION BONDS AND NOTES

"SEC. 483. (a) The Council shall provide in each annual budget for the District of Columbia government for a fiscal year adopted by the Council pursuant to section 446 sufficient funds to pay the principal of and interest on all general obligation bonds or notes issued under section 461(a), section

471(a), or section 472(a) becoming due and payable during such fiscal year.

"(b) The Mayor shall insure that the principal of and interest on all general obligation bonds and notes issued under section 461(a), section 471(a), or section 472(a) are paid when due, including by paying such principal and interest from funds not otherwise legally committed.

"(c) If the Mayor determines that no other funds are available to pay the principal and interest due and payable during any fiscal year on any general obligation bond or note issued under section 461(a), section 471(a), or section 472(a), the annual Federal payment appropriated for such fiscal year under the authorization contained in section 502 shall first be used to pay such principal or interest.

"(d) The fourth sentence of section 446 shall not apply to—

"(1) any amount set aside in a debt service fund under section 481(a);

"(2) any amount obligated or expended for the payment of the principal of, interest on, or redemption premium for any general obligation bond or note issued under section 461(a), section 471(a), or section 472(a);

"(3) any amount obligated or expended as provided by the Council in any annual budget for the District of Columbia government pursuant to subsection

(a) or as provided by any amendment or supplement to such budget; or

"(4) any amount obligated or expended by the Mayor pursuant to subsection (b) or (c).".

SEC. 15. Part E of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–241 et seq.) is amended—

(1) by redesignating subpart 4 as subpart 5; and

(2) by inserting after section 481 the following new subpart:

"Subpart 4—Full Faith and Credit of the United States

"FULL FAITH AND CREDIT OF THE UNITED STATES NOT PLEDGED

"SEC. 484. The full faith and credit of the United States is not pledged for the payment of any principal of or interest on any bond, note, or other obligation issued by the District under this part. The United States is not responsible or liable for the payment of any principal of or interest on any bond, note, or other obligation issued by the District under this part.".

SEC. 16. Section 490 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–254) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a)(1) The Council may by act authorize the issuance of revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, to refinance, or to assist in the financing or refinancing of, undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, pollution control facilities, and industrial and commercial development. Any such financing or refinancing may be effected by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

"(2) Any revenue bond, note, or other obligation issued under paragraph (1) shall be a special obligation of the District and shall be a negotiable instrument, whether or not such bond, note, or other obligation is a security as defined in section 28:8–102(1)(a) of title 28 of the District of Columbia Code.

"(3) Any revenue bond, note, or other obligation issued under paragraph (1) shall be paid and secured (as to principal, interest, and any premium) as provided by the act of the Council authorizing the issuance of such bond, note, or other obligation. Subject to subsection (c), any act of the Council authorizing the issuance of such bond, note, or other obligation may provide for (A) the payment of such bond, note, or

other obligation from any available revenues, assets, or property, and (B) the securing of such bond, note, or other obligation by the mortgage of real property or the creation of any security interest in available revenues, assets, or other property.

"(4)(A) In authorizing the issuance of any revenue bond, note, or other obligation under paragraph (1), the Council may enter into, or authorize the Mayor to enter into, any agreement concerning the acquisition, use, or disposition of any funds or property. Any such agreement may create any security interest in any funds or property, may provide for the custody, collection, security, investment, and payment of any funds (including any funds held in trust) for the payment of such bond, note, or other obligation, may mortgage any property, may provide for the acquisition, construction, maintenance, and disposition of the undertaking financed or refinanced using the proceeds of such bond, note, or other obligation, and may provide for the doing of any act (or the refraining from doing of any act) which the District has the right to do in the absence of such agreement. Any such agreement may be assigned for the benefit of, or made a part of any contract with, any holder of such revenue bond, note, or other obligation issued under paragraph (1).

"(B) Notwithstanding article 9 of title 28 of the District of Columbia Code, any security interest created under sub-

paragraph (A) shall be valid, binding, and perfected from the time such security interest is created, with or without the physical delivery of any funds or any other property and with or without any further action. Such security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to such security interest is recorded or filed. The lien created by such security interest is valid, binding, and perfected with respect to any individual or legal entity having claims against the District, whether or not such individual or legal entity has notice of such lien.

"(C) Any funds of the District held for the payment or security of any revenue bond, note, or other obligation issued under paragraph (1), whether or not such funds are held in trust, may be secured in the manner agreed to by the District and any depository of such funds. Any depository of such funds may give security for the deposit of such funds.";

(2) by striking out subsection (b) and inserting in lieu thereof the following new subsection:

"(b) No property owned by the United States may be mortgaged or made subject to any security interest to secure any revenue bond, note, or other obligation issued under subsection (a)(1).";

(3) by striking out subsection (e) and inserting in lieu thereof the following new subsection:

"(e) Any act of the Council authorizing the issuance of revenue bonds, notes, or other obligations under subsection (a)(1) may—

"(1) briefly describe the purpose for which such bonds, notes, or other obligations are to be issued;

"(2) identify the Act authorizing such purpose;

"(3) prescribe the form, terms, provisions, manner, and method of issuing and selling (including sale by negotiation or by competitive bid) such bonds, notes, or other obligations;

"(4) provide for the rights and remedies of the holders of such bonds, notes, or other obligations upon default;

"(5) prescribe any other details with respect to the issuance, sale, or securing of such bonds, notes, or other obligations; and

"(6) authorize the Mayor to take any actions in connection with the issuance, sale, delivery, security, and payment of such bonds, notes, or other obligations, including the prescribing of any terms or conditions not contained in such act of the Council.";

(4) by striking out subsection (f) and inserting in lieu thereof the following new subsection:

"(f) The fourth sentence of section 446 shall not apply to—

"(1) any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued under subsection (a)(1);

"(2) any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued under subsection (a)(1); and

"(3) any amount obligated or expended to secure any revenue bond, note, or other obligation issued under subsection (a)(1).''; and

(5) by striking out paragraph (3) of subsection (g) and inserting in lieu thereof the following new paragraph:

"(3) The fourth sentence of section 446 shall not apply to—

"(A) any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued under subsection (g)(1);

"(B) any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued under subsection (g)(1); and

"(C) any amount obligated or expended to secure any revenue bond, note, or other obligation issued under subsection (g)(1).".

SEC. 17. Section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1–147(c)(1)) is amended in the first sentence by inserting "and except as provided in section 462(c) and section 472(d)(1)" after "title IV of this Act".

SEC. 18. The table of contents of the District of Columbia Self-Government and Governmental Reorganization Act is amended—

(1) by striking out the item relating to section 462 and inserting in lieu thereof the following new item:

"Sec. 462. Contents of borrowing legislation and elections on issuing general obligation bonds.";

(2) by striking out the item relating to section 465 and inserting in lieu thereof the following new item:

"Sec. 465. Issuance of general obligation bonds.";

(3) by striking out the item relating to section 466 and inserting in lieu thereof the following new item:

"Sec. 466. Public or private sale.";

(4) by inserting after the item relating to section 466 the following new item:

"Sec. 467. Authority to create security interests in District revenues.";

(5) by inserting after the item relating to section 481 the following new items:

"Sec. 482. Full faith and credit of the District.
"Sec. 483. Payment of general obligation bonds and notes.";

(6) by redesignating subpart 4 of part E as subpart 5; and

(7) by inserting after the item relating to section 483 the following new item:

"Subpart 4—Full Faith and Credit of the United States

"Sec. 484. Full faith and credit of the United States not pledged.".

SEC. 19. (a) Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) Any revenue bonds, notes, or other obligations authorized by an act of the Council of the District of Columbia enacted subsequent to August 1, 1981, pursuant to section 490(a) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 47–254(a)) may be secured by a mortgage of real property or a security interest in any revenues, assets, or other property, notwithstanding that such mortgage or other security interest may not have been authorized by such section 490(a) as of the effective date of such act.

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